

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARK EDWARD LEE,

Defendant-Appellant.

UNPUBLISHED

October 7, 1997

No. 193589

Calhoun Circuit Court

LC No. 95-002162 FH

Before: Doctoroff, P.J., and Cavanagh and Saad, J.J.

MEMORANDUM.

Defendant appeals by right his jury conviction of, inter alia, resisting and obstructing a police officer in the performance of his duties. Defendant contends that his warrantless arrest for misdemeanor domestic violence charges pursuant to MCL 764.15a; MSA 28.874(1), was unconstitutional and therefore that he was privileged to use nondeadly force to resist arrest. *People v Krum*, 374 Mich 356; 132 NW2d 69 (1965).

The actual arrest took place outside the apartment formerly shared by defendant and the complainant. Thus, this case does not involve unannounced entry into a home, *Wilson v Arkansas*, 514 US 927; 115 S Ct 1914; 131 L Ed 2d 976 (1995), or entry into a home without a warrant, *Welsh v Wisconsin*, 466 US 740; 104 S Ct 2091; 80 L Ed 2d 732 (1984). To the contrary, the officer's presence in the residence prior to defendant's arrival was at the invitation of the complainant, who had the right of possession.

That the arrest for a misdemeanor committed outside the officer's presence may not have been permitted by common law does not make the statute, which amended the common law, unconstitutional. The Legislature has the power to change the common law by statute. Const 1963, art 3, §7. So long as the probable cause required by the Fourth Amendment is established, as it was without challenge here, *Whren v United States*, 518 US ____; 116 S Ct 1769; 135 L Ed 2d 89, 101 (1996), the Legislature is free to expand the common law arrest powers of a peace officer. *Kurtz v Moffitt*, 115 US 487, 505; 6 S Ct 148; 29 L Ed 458 (1885). On the facts of this case, therefore, the amendment to the arrest statute is not unconstitutional. Accordingly, defendant was not privileged to resist arrest,

because the arrest was legal, being expressly authorized by statute, validating defendant's conviction of resisting and obstructing a police officer in the performance of duty.

Affirmed.

/s/ Martin M. Doctoroff

/s/ Mark J. Cavanagh

/s/ Henry W. Saad